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APPENDIX

VOLUME I

(LINDEN LUMBER DIVISION, SU[illegible])

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1231

LINDEN LUMBER DIVISION, SUMMER & Co.,
Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD, ET AL.

No. 73-1234

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

TRUCK DRIVERS UNION LOCAL No. 413, AND
TEXTILE WORKERS UNION

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 11, 1974
CERTIORARI GRANTED APRIL 22, 1974

Supreme Court of the United States

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(The Board's decision and order and the opinion and judgment of the court of appeals are not reprinted in this appendix since they are already printed as an appendix to the petitions.)

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the matter of: Truck Drivers Union Local No. 413, et al.

Case Nos. 9-CA-4197
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2.23.67	Charge filed in 9-CA-4197
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7.31.67	Complaint and notice of hearing issued in 9-CA-4309
undated	Linden Lumber Div., answer to complaint
7.31.67	Regional Director's order consolidating cases and rescheduling hearing, dated
10. 3.67	Hearing opened
10. 4.67	Hearing closed
1.26.68	Trial Examiner's Decision issued
2.19.68	Linden Lumber Div., exceptions to the Trial Examiner's Decision, received
4.15.68	Board's order remanding proceeding to Trial Examiner for further recommendations, dated
4.26.68	Trial Examiner's Supplemental Decision issued

5.17.68 Linden Lumber Div., exceptions to the Trial Examiner's Supplemental Decision, received

6. 7.71 Decision and Order issued by the National Labor Relations Board.

9.13.73 Decision and Judgment of Court of Appeals for District of Columbia Circuit

10.11.73 Linden Lumber Company's petition for rehearing received.

11. 6.73 Court's order filed denying petition for rehearing

4.22.74 Order of the Supreme Court granting certiorari

[1]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 9-CA-4283
Case No. 9-CA-4309
Case No. 9-CA-4197

LINDEN LUMBER DIVISION, SUMMER & CO.

and

TRUCK DRIVERS UNION LOCAL NO. 413, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Court Room, College of Law Building
Ohio State University
1659 North High Street
Columbus, Ohio
Tuesday, October 3, 1967

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

IVAR H. PETERSON, Trial Examiner.

APPEARANCES:

HARVEY B. RECTOR, 2772 Manchester N. W., North Lawrence, Ohio 44666, appearing on behalf of the Respondent.

EDWARD C. VERST, Room 2407, Federal Office Building, 550 Main Street, Cincinnati, Ohio, General Counsel, appearing on behalf of the Charging Party.

VICTOR I. SMEDSTAD, 307 - 11 West Monument Building, Dayton, Ohio 45402, appearing on behalf of the Charging Party.

• • • •

[6] MR. VERST: I would like to propose the following stipulation, namely, that the following individuals

with the following job classifications fall within the appropriate collective bargaining unit as alleged in Paragraph 6 of the Complaint in Case No. 9-CA-4197, and as admitted to be an appropriate bargaining unit in answer to that complaint; that they were employees within the collective bargaining unit at all times material herein, namely, Richard Alexander, truck driver; Robert Beckelheimer, mill worker; Melvin Bice, yard worker. General Counsel will reserve his position on Robert Dupre, classification, dispatcher.

The next individual within the appropriate unit would be Roy Hamilton, truck driver; Buddy Kountz, K-o-u-n-t-z, truck driver; Norman LeVeck, truss plant worker; William Lynch, L-y-n-c-h, truck driver.

General Counsel contends that Richard Marsh is non supervisory.

[7] TRIAL EXAMINER: But you also will agree that Respondent contends that he is?

MR. VERST: I will also agree with that.

TRIAL EXAMINER: That is an issue to be determined?

MR. VERST: Yes, sir.

The next individual within the appropriate unit is Bill Martin, a yard worker; Floyd Ross, Mill worker; John Thompson, yard worker, and we will stipulate with Respondent Employer that at all times material herein Roy Toops, T-o-o-p-s, was a supervisor as defined in Section 211 of the Act.

MR. RECTOR: How about Schafer?

MR. VERST: General Counsel at this time will reserve his position on Henry Schafer.

MR. SMEDSTAD: The Charging Party believes that the outcome of this case will not be affected in any way by whether or not Mr. Schafer is or is not a supervisor. Therefore, we would not enter into any stipulation as to his status. I feel certain that there will probably be litigation on it, but we would not take any position, either way, yet.

TRIAL EXAMINER: And your position, Mr. Rector, on Schafer is that he is supervisory?

MR. RECTOR: The Respondent's position here is that Roy Toops, whom they have conceded is a supervisor, is a [8] foreman, a yard foreman; Henry Schafer is a mill superintendent; Richard Marsh—They have it spelled March here, but it is Marsh—was superintendent of the truss department.

TRIAL EXAMINER: T-r-u-s-s.

MR. RECTOR: Yes.

And that Robert Beckelheimer became foreman in Schafer's place when Schafer resigned on February 6.

TRIAL EXAMINER: Other than the difference of view with respect to Schafer and Marsh, and the additional statement you just made about Mr. Beckelheimer replacing Mr. Schafer on or about February 6, there is agreement, is there not?

MR. RECTOR: Yes, I will go along with that statement and my statement, and will stipulate to that effect.

One other change here, too, Richard Alexander and Bill Martin were discharged, as I understand it. Alexander is a part of this case here.

TRIAL EXAMINER: Yes, I understand that.

MR. RECTOR: But Martin is not—But on January 9 he was. He was an employee and would have been.

TRIAL EXAMINER: He continued to be an employee until February 6?

MR. RECTOR: Yes.

TRIAL EXAMINER: All right. I think the result of [9] this colloquy is that there is agreement that the list as read by General Counsel encompasses all employees in an appropriate and at all times material, with the exception of the difference of view as to the status of Mr. Schafer, Mr. Marsh, and the added fact that subsequent to, or on or about February 6 Mr. Beckelheimer replaced Mr. Marsh?

MR. SMEDSTAD: Mr. Schafer.

TRIAL EXAMINER: Mr. Schafer?

MR. RECTOR: That is correct, sir.

TRIAL EXAMINER: All right. I would suggest that perhaps the list, which I see you have in front of you, be introduced as General Counsel's Exhibit 2, so that we are not solely dependent upon the transcript.

MR. VERST: Very well.

(General Counsel's Exhibit No. 2 was marked for purposes of identification.)

MR. VERST: We further stipulate that at all times material herein, William Dunfee was the assistant manager of the Respondent company and supervisor as defined in Section 211 of the Act.

MR. RECTOR: We can so stipulate.

MR. VERST: Thank you.

TRIAL EXAMINER: You do stipulate then?

MR. VERST: Yes.

TRIAL EXAMINER: Do you wish to offer General Counsel's [10] Exhibit 2 into evidence?

MR. VERST: Yes.

TRIAL EXAMINER: Any objection, Mr. Rector, as to General Counsel's Exhibit 2, the list?

MR. RECTOR: No.

TRIAL EXAMINER: Very well. It will be received.

(The document marked General Counsel's Exhibit No. 2 was received into evidence.)

MR. VERST: May we further stipulate, Mr. Rector, that while we both reserve our position on Henry Schafer, the company contending he is a supervisor and General Counsel contending he is not supervisory, may we further stipulate that he voluntarily quit on February 5, 1967?

MR. RECTOR: Yes—just a moment. February 6.

MR. VERST: February 6, all right, I will agree to that. The Charging Party will so stipulate.

MR. RECTOR: I will stipulate.

TRIAL EXAMINER: All right.

MR. VERST: May we further stipulate at this time Mr. Rector, that employee William Lynch quit on or about February 21 or 22, 1967?

MR. RECTOR: Approximately that date. Yes, we will stipulate.

MR. VERST: General Counsel so stipulates.

TRIAL EXAMINER: Very well, it will be received.

[11] MR. VERST: May we further stipulate that Robert Beckelheimer, whom I believe the Employer contends took over Henry Schafer's place when Mr. Schafer voluntarily quit, that Robert Beckelheimer quit on or about February 19, 1967?

MR. RECTOR: We will so stipulate.

MR. SMEDSTAD: So stipulate.

• • • •

[12] DOW NORMAN

a witness called by and on behalf of the Charging Party, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated, and state your name and address for the record.

THE WITNESS: Dow Norman, 2249 Springmont Street, Columbus, Ohio, County of Franklin.

DIRECT EXAMINATION

BY MR. VERST:

Q Mr. Norman, by whom are you employed?

A The Teamsters Union, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 413, Columbus, Ohio.

Q Was this formerly known as the Truck Drivers Union Local 413, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America?

A That is right.

Q It was formerly known as the name which I just stated until recently, when a new charter was obtained to [13] read the Teamsters?

A That is right.

Q Local No. 413?

A That is right.

Q What is your position with that organization?

A Business agent and organizer.

Q How long have you held that position?
A Four years.

• • • •

[16] BY MR. VERST:

Q Mr. Norman, are you aware of the fact that there was an [17] organizing campaign among the employees of the Linden Lumber?
A That is correct.
Q Were you involved in this organizing campaign in any manner?
A That is right.
Q How did you first become involved in this campaign?
A A telephone call.
Q When?
A On or about December the 28th.
Q Was this from an individual who identified himself as an employee of Linden Lumber?
A That is right.
Q Now, as a result of this telephone call, did you then schedule a meeting with the employees?
A I did.
Q When and where?
A December 29—should I name the place?
Q Yes, where?
A Zona's Restaurant.
Q Zona's Restaurant?
TRIAL EXAMINER: How do you spell that?
THE WITNESS: Z-o-n-a-'s.

BY MR. VERST:

Q Now, did this meeting, in effect, take place?
[18] A Pardon?
Q Did this scheduled meeting, in fact, take place?
A Yes, it did.
Q Approximately how many employees of the Linden Lumber attended this meeting?
A Twelve.

Q I hand you what has been marked for identification General Counsel's—and received into evidence subject to reservation—Exhibits 4-A through 4-L and ask you if you can identify those cards for me, pleae?
Let's take 4-A.
A Yes. I can identify it.
Q What is 4-A?
A It is an authorization card.
Q Signed by whom?
A Melvin Bice.
Q Who did Mr. Bice receive this card from?
A From me.
Q Mr. Bice signed that card in your presence?
A Yes, he did.
Q After he signed that card in your presence, what did he do with it?
A He gave it to me.
Q Okay. How about 4-B?
A Richard Alexander signed this card before me on [19] December 29 and handed it back to me.
Q Who did he get it from?
A Now, wait a minute. They didn't hand them back individually or sign them individually, they signed them all at the same time, simultaneously.
Q Did you personally hand these cards to all the employees?
A That is right.
Q Did Mr. Alexander sign that card in your presence?
A Yes, he did.
Q Was this card then handed back to you?
A After everybody had signed them I collected the cards.
Q Okay. How was this done? Was this on a big table?
A Yes, it was. There were two tables drawn together and a booth.
Q Were you at the head of the table?
A Yes, I was—Well, I was on the side of the table, watching them, standing—
Q Okay.

A —because I was telling them—They would ask me questions as to how to sign the card, and I was telling the they couldn't be printed and they had to be signed.
Q Okay. How about 4-C?
A Frederick Baum, truck driver, signed this card before me on the 29th of December of '66. This gentleman has since [20] been discharged.
Q Did you hand the card to Mr. Baum?
A I did.
Q Did he sign it in your presence?
A He did.
Q Was the card returned to you?
A That's right.
Q Okay. 4-D?
A Homer Beckelheimer signed this card in front of me on 12-29-66. He was one of the gentlemen sitting in the booth.
Q Did you hand him the card?
A I did.
Q Did he sign it in your presence?
A He did.
Q Did he then return the card to you?
A He did.
Q 4-F?
TRIAL EXAMINER: What about 4-E?

BY MR. VERST:

Q Okay. How about 4-E?
A Roy Hamilton signed this card in my presence, 12-29-66.
Q Did you hand Mr. Hamilton that card?
A Yes, I did.
Q When he finished signing it in your presence, did he return it to you?
[21] A Yes, he did.
Q 4-F?
A Fred Kountz signed this card in my presence, 12-29-66.
Q Did you hand the card to Mr. Kountz?
A Yes, I did.
Q After he signed it did he return it to you?

A Yes, he did. Not immediately.
Q Prior to the expiration of said meeting?
A Yes.
Q How long did this meeting last?
A I would say about an hour.
Q Okay. 4-G?
A Norman LeVeck signed this card in my presence on 12-29-66.
Q Did you hand the card to Mr. LeVeck?
A Yes, I did.
Q After he signed it, did he return it to you?
A Yes, he did.
Q 4-H?
A Richard Elmer Marsh signed this card in my presence, 12-29-66.
Q Did you hand that card to Mr. Marsh?
A Yes, I did.
Q And after he signed it in your presence did he return it to you?
[22] A Yes, he did.
Q 4-J?
TRIAL EXAMINER: What about 4-I?
THE WITNESS: That is "I."

BY MR. VERST:

Q 4-I?
A Bill Martin signed this card in my presence, 12-29-66.
Q Did you hand that card to Mr. Martin?
A Yes, I did.
Q After he signed it, did he return it to you?
A Yes, he did.
Q 4-J?
A Floyd Ross signed this card in my presence, 12-29-66.
Q Did you hand the card to Mr. Ross?
A Yes, I did.
Q After he signed it, did he return it to you?
A Yes, he did.
Q 4-K?
A Henry Schafer signed this card in my presence, 12-29-66. He was the other gentleman in the booth.

Q Did you hand the card to Mr. Schafer?
A Yes, I did.
Q After he signed it, did he return it to you?
A Yes, he did.
Q 4-L?
[23] A John Thompson. He signed this card in my presence on 12-29-66. Since then, this man has retired.
Q Did you hand the card to Mr. Thompson?
A Yes, I did.
Q After he signed it in your presence, did he return it to you?
A Yes, he did.
MR. VERST: I don't know that this is procedurally necessary, but I will again offer these cards into evidence.
MR. RECTOR: No objection to them going into evidence.

BY MR. VERST:

Q I will ask you at this time, Mr. Norman, whether, during the course of this meeting with these employees and who you have testified signed these various authorization cards, at any time during this meeting did Mr. Marsh or Mr. Schafer get up and speak to the employees?
A No, they did not.
Q Did you do the talking?
A I did the talking.
Q Now, after you obtained these various authorization cards, did you then—or did the Local Union then send a letter to the employer?
A Yes, we did.
MR. VERST: I would like to have marked for identification General Counsel's Exhibit No. 5.

[24] (The document was marked for identification as General Counsel's Exhibit No. 5.)

BY MR. VERST:

Q I will show you what has been marked for identification General Counsel's Exhibit No. 5 and ask you

if that is the letter that was sent to Linden Lumber?
A That is right.
MR. VERST: I will offer General Counsel's Exhibit No. 5 into evidence.
TRIAL EXAMINER: Any objections?
MR. RECTOR: No objections.
TRIAL EXAMINER: It will be received.

(The document marked General Counsel's Exhibit No. 5 was received into evidence.)

BY MR. VERST:

Q Did your Local Union then file a petition with the National Labor Relations Board?
A Yes, we did.
MR. VERST: I would like this marked for identification, please.

(The document was marked for identification as General Counsel's Exhibit No. 6.)

BY MR. VERST:

Q I will hand you what has been marked for identification as General Counsel's Exhibit No. 6 and ask you if that is the [25] petition that your Local Union filed with the Board?
A Yes, it is.
MR. VERST: I will offer General Counsel's 6 into evidence.
MR. RECTOR: No objections.
MR. SMEDSTAD: No objections.
TRIAL EXAMINER: It will be received.

(The document marked General Counsel's Exhibit No. 6 was received into evidence.)

BY MR. VERST:

Q Now, did your Local Union receive a reply to your letter of January 3, 1967?
A Yes, we did.
MR. VERST: Please mark this for identification.

(The document was marked for identification as General Counsel's Exhibit No. 7.)

BY MR. VERST:

Q I will hand you what has been marked for identification as General Counsel's Exhibit No. 7 and ask you if that is the reply which you received from the Linden Lumber Company?

A Yes, it is.

MR. VERST: I will offer General Counsel's Exhibit No. 7 into evidence.

MR. SMEDSTAD: No objections.

MR. RECTOR: No objections.

[26] TRIAL EXAMINER: It will be received.

(The document marked General Counsel's Exhibit No. 7 was received into evidence.)

BY MR. VERST:

Q Now, was a hearing scheduled on the petition, General Counsel's Exhibit No. 6?

A It was.

Q Do you recall the date?

A February 3.

Q Do you recall the location?

A The New Post Office Building, Marconi Boulevard, Second Floor, Room 209.

Q Did you attend this hearing?

A Yes, I did.

Q Who else attended on behalf of the Union?

A Victor Smedstad, representing attorney; two employees, Dick Marsh and Henry Schafer, employees of the company.

Q Who was present for the Employer?

A There was Mr. Riley; Mr. Harvey Rector, representing the company; I think there was a Mr. Pohlman there.

Q Mr. Pohlman?

A I think.

Q Do you know what relation he has with the company?

A I think he works in the office.

Q All right.

[26A] A I said Mr. Dupre, didn't I? There was Mr. Toops.

Q Was that Robert Dupre?

A Yes.

Q Okay. Was that Roy Toops?

A Roy Toops.

Q Okay.

A Lynch, Mason, and there were either two or three representing—representatives of another company, Summers and Company.

Q Okay. Would you tell the Court what happened at this hearing?

A Well, there wasn't a hearing.

Q You mean it did not go on in a formal record?

A That's right.

Q What, in fact, happened?

A Well, while in the hearing room, Mr. Rector and our attorney and the Hearing Officer—I cannot recall his name, I think it was Brown—they were talking back and forth about the unit. Mr. Rector was saying that his company could not recognize the Teamsters Union as the bargaining agent because his company was primarily made up of supervisors—or words to that extent, that I could understand.

Then there was quite a bit of confusion and arguing back and forth amongst the parties concerned, and the conversation—The hearing just never got underway. The Hearing [27] Officer said that he was there to hear the case, not to decide what would be what, that that would be decided at Cincinnati, at the Regional Office.

Q What would be decided?

A Well, whether we would be the bargaining agent or not. Mr. Rector said that he didn't care whether it was —what was decided in Cincinnati at the Regional Office; that the company was taking the position that they still wouldn't recognize the Teamsters Union because they were primarily company supervisors. So our attorney tapped me on the shoulder and said we should call for a recess, which we did.

We asked the Hearing Examiner for a recess and went out into the hall.

Q Did you then, as a result of this conversation in the hall with Mr. Smedstad, withdraw the petition?

A Yes, we did. He recommended that, and called my boss—our boss, and our boss told us to go ahead, told the attorney to go ahead as he saw fit.

Q Now, when you left the hearing at the Post Office Building, where did you go from there?

A The two employees of Linden Lumber, we advised them to go back to work.

Q Who were they?

A Henry Schafer and Dick Marsh.

Q Where did you and Mr. Smedstad then go?

[28] A Vic and I went back up to our office at 233 South High.

Q The Union offices?

A The Union offices, yes.

Q And while there, what did Mr. Smedstad do?

A He gave it some deep thought—I guess that's what you call it—and proceeded to draw up some documents. He went through a few books there and drew up some documents.

(Documents were marked General Counsel's Exhibits Nos. 8, 9, and 10 for identification.)

BY MR. VERST:

Q I hand you what has been marked for identification as General Counsel's Exhibit No. 8, and ask you if that is one of the documents which Mr. Smedstad prepared while you were at the union offices on that day?

A That is right.

Q I will show you what has been marked for identification as General Counsel's Exhibit No. 9 and ask you if the typed portion of that document, consisting of approximately nine or ten lines, is also a document which Mr. Smedstad prepared at the union offices that day?

A That is right.

Q And now, I hand you what has been marked for identification as General Counsel's Exhibit No. 10 and ask you if that is also another document which Mr. Smedstad prepared at [29] that time?

A That is right.

Q Did you then schedule another meeting with the employees?

A I did.

Q When was this meeting held?

A The next day, which would be Saturday, at noon.

Q February 4?

A February the 4th.

Q Where was this meeting held?

A At the Union Hall, 233 South High Street.

Q Okay. How many employees of Linden Lumber were in attendance at this meeting?

A There were 11.

Q Now, would you tell me what you told the employees at that meeting, and what action you took?

A I told the employees what transpired at the hearing.

Q What did you tell them?

A I told them that there was not a hearing and the company had taken the position that they were not going to recognize us, whether the Board ruled for us or not, and on the advice of our attorney we had drew up these papers.

Q When you say "these papers," now, you are referring to General Counsel's Exhibits 8, 9 and 10?

A That is right.

[30] Q Okay.

A And that we should approach the company in this manner.

Q What, if anything, did you do with those documents at that meeting?

A I distributed the documents to each and every member. I told them to read each and every document.

Q Did you distribute them to each and every employee present?

A That is right. No, wait a minute. To nine of them. I said there was 11 present.

TRIAL EXAMINER: There were nine present?

THE WITNESS: There was 11 present.

BY MR. VERST:

Q There were—Referring you to what has been marked for identification as General Counsel's Exhibit 9, in addition to the names appearing on that sheet, who else was present at the meeting?

A Dick Marsh and Henry Schafer.

Q Okay. Now, you testified that you showed General Counsel's Exhibits 8, 9, and 10 to all the employees present?

A That is right.

Q Except for Marsh and Schafer?

A That's right.

Q Did you ask these employees if they read these various documents?

[31] A After they read them—

Q Did you see them read the documents?

A Yes, I seen them read the documents.

Q Then what did you do?

A After I asked them if they had read the documents, all three of them, they said yes. So I said if they had read them, to come up to the desk—at the table, rather. Where the union hall is, there are seats out here, and there is a table up here (indicating), and I am sitting at the table. And when they approached and came up, I asked each and every one, before they signed it, "Are you sure you read all three of these documents and understand what it means?" And when they gave me a "Yes" answer, then they signed their names.

Q When they signed their names—you are referring to the various signatures appearing on General Counsel's Exhibit 9?

A Yes.

Q Did all those employees sign that in your presence?

A That is right.

Q Was this after you had asked them if they had read and understood all three documents?

A That is right.

Q Now, you state that Richard Marsh and Henry Schafer were present during this meeting?

A That's right.

[32] Q Did either of these two gentlemen speak to the employees during the course of this meeting?

A No, sir.

Q Now, after this meeting, following this meeting what, if anything, did you do with General Counsel's Exhibits 8, 9 and 10?

A Repeat that.

Q Following this meeting with the employees, after the meeting with the employees, what, if anything, did you do with General Counsel's Exhibits 8, 9 and 10?

A Well, this happened on Saturday.

Q What happened, the meeting?

A The meeting.

Q Okay.

A On Monday morning, at approximately—

Q Was this the following Monday?

A That's right, on the 15th, I think it was.

TRIAL EXAMINER: When you say the following Monday, that was the sixth.

THE WITNESS: Fifth or sixth, that's right, the sixth. The following Monday was the sixth.

BY MR. VERST:

Q It was the following Monday?

A Yes.

Q Okay.

[33] A The following Monday I arrived at the Linden Lumber, it was approximately ten o'clock—between 9:00 and 10:00—and I went in and asked for Mr. Riley.

Q The president?

A I guess he's the president. He was on the phone. So the man that went back and told him said he would be out in a moment, which he did.

When he came out, I showed him these documents, and I told him what they were, and I asked him if he wanted—if he would care to read them or if he cared

for me to read them to him, and he said no. He said, "Our attorney will take care of this." He said, "I'll send them to him."

So I said, "Well, would you care for some documents for yourself?" And he said, "No, our attorney will take care of these." He said he didn't have anything to do with it.

Q That was William Riley?

A That's right. I asked him who his attorney was and he said Mr. Harvey Rector. I thanked him and walked out.

Q Now, referring you to General Counsel's Exhibits 8, 9 and 10, which you testified you showed to Mr. Riley—

A Yes, I showed them to him.

Q —were these documents in a loose form, or were they enclosed in an envelope?

A They were in a loose form.

[34] Q Just as they appear there, there in your hands?

A That is right.

MR. VERST: I will offer General Counsel's Exhibits 8, 9 and 10 into evidence.

TRIAL EXAMINER: Any objections?

MR. RECTOR: No objections.

TRIAL EXAMINER: They will be received, then.

(The documents marked General Counsel's Exhibits 8, 9 and 10 were received into evidence.)

BY MR. VERST:

Q Was there any mention at the conclusion of this conversation with Mr. Riley as to whether or not he would be in touch with you or you would be in touch with him?

A Yes. He said that he would give it to his counsel and I asked him would we be hearing from him, and he said, "Yes, you will be hearing from us."

Q Did you, in fact, thereafter hear from him?

A Well, I called him a couple of days—

TRIAL EXAMINER: Called who?

THE WITNESS: Called Mr. Riley.

BY MR. VERST:

Q I am sorry. I didn't catch that. What was your answer?

A I said I called Mr. Riley in about two days.

Q All right, and what was that conversation about?

[35] A He said that he had sent the papers in and that if I hadn't received an answer, I should receive an answer shortly.

TRIAL EXAMINER: He sent the papers to Mr. Rector?

THE WITNESS: Right.

BY MR. VERST:

Q Did you thereafter receive a reply from Mr. Rector?

A Yes, I did.

MR. VERST: Please mark this for identification.

(The document was marked General Counsel's Exhibit 11 for identification.)

THE WITNESS: Yes, I did, the next day.

BY MR. VERST:

Q I show you what has been marked for identification General Counsel's Exhibit No. 11, and ask you if that is the reply which you received from Mr. Rector?

A That is it.

MR. VERST: I will offer General Counsel's Exhibit No. 11 into evidence.

MR. RECTOR: No objections.

MR. SMEDSTAD: No objections.

TRIAL EXAMINER: Very well. It will be received.

(The document marked General Counsel's Exhibit No. 11 was received into evidence.)

BY MR. VERST:

[36] Q Now, upon receipt by you of General Counsel's Exhibit No. 11, did you thereafter conduct another meeting with the employees of Linden Lumber?

A Yes, I did.

Q And where was this meeting conducted?

A At the Union Hall.
Q At 233 South High?
A 233 South High.
Q And who was in attendance at this meeting, so far as the employees of Linden Lumber?
A There were nine employees involved.
TRIAL EXAMINER: What date was this?
THE WITNESS: This would have been the 9th or the 10th.
TRIAL EXAMINER: The 9th or 10th of February?
THE WITNESS: That's right. I know when I got the letter I immediately called the meeting.

BY MR. VERST:

Q Okay. Showing you General Counsel's Exhibit No. 9, received into evidence, I will ask you if all the employees whose signatures appear on that document were in attendance at that meeting held either February 9th or 10th?
A Yes.
Q Now, will you tell us what happened at that meeting?
A I showed the employees the letter that I had received from Mr. Rector.
[37] Q Are you referring now to General Counsel's Exhibit No. 11?
A That is right. I first read it to them—
Q You did what?
A I first read the letter to them.
Q Okay. Continue.
A Then I passed the letter around among them and told them to read it, too. They also read it, and then I explained to them what it meant.
Q Okay. What did you tell the employees?
A I told them the company was refusing to accept us as their bargaining agent.
Q Okay. What else did you tell them?
A I told them—I said we only had one more way to go, through a strike.
Q Was there, in fact, a strike vote taken?

A That is right.
Q How did you go about this?
A There was a motion put on the floor whether the people wanted to strike Linden Lumber or whether they didn't. There was a motion put on the floor and seconded.
Q Was this motion put on the floor and seconded by employees present?
A That's right.
Q Okay. You may continue.
[38] A After it was put on the floor and seconded, I explained to them how they went about it. I told them—
Q How they went about what?
A To take a strike vote. I said it was by secret ballot and that everybody had a right to vote the way they pleased, and under no circumstances did I want anybody letting anybody else see how they marked a ballot, and I said, "If you want to strike the Linden Lumber Company you will mark 'yes' on a piece of paper"—which I gave them. I said, "If you don't want to strike, you mark 'no.'" And I said that is the reason, "If you don't want anybody to see, if you are afraid you are going to be made fun of," and I said "then they don't see. They can't make fun of you."
I said, "Fold the ballot so nobody can see it and drop it in the hat."
They folded the ballots, they dropped them in a hat, they were collected by a member and it was put on the table, dumped out on the table, and one member unfolded them and the other member called out yes or no. I took the tally.
Q And what was the result of the tally?
A There were nine yeses and no noes.
Q Nine yes—what?
A Nine yes to strike.
Q Did the employees subsequently strike Linden Lumber Company?
[39] A Yes, they did.
Q When did the strike commence?
A The 15th of February. The morning of the 15th.

Q I will show you what has been received into evidence as General Counsel's Exhibit 9 and I will ask you if all the employees whose signatures appear on that document went out on strike and walked a picket line at Linden Lumber?

A That's right, all but Robert Beckelheimer.

Q All the employees on that list except Robert Beckelmyer?

A Robert Beckelheimer.

Q Did Mr. Beckelheimer remain on the job?

A Yes, he did.

Q Do you know approximately how long?

A I think it was a day and a half.

Q Do you know of your own knowledge of Mr. Beckelheimer quit?

A Yes, he did. He gained employment at another place.

Q Is it your testimony that all these employees whose names appear on General Counsel's Exhibit 9, with the exception of Beckelheimer actually walked the picket line?

A That is right.

MR. VERST: Have I as yet offered General Counsel's Exhibit No. 11?

TRIAL EXAMINER: Yes, you have, and it has been [40] received.

MR. RECTOR: Objection.

TRIAL EXAMINER: It is received.

BY MR. VERST:

Q One thing: At this meeting at which this strike vote was taken and which you have testified occurred either February 9th or 10th, did Mr. Henry Schafer or Mr. Richard Marsh show up at that meeting?

A No, they did not.

Q Did Mr. Richard Marsh come out on the picket line on February 15, 1967?

A No, he did not.

Q Do you know why he did not?

A Well, his status was still undecided by the union or the company. It was under question, as far as we were concerned, with the NLRB, whether he was to be classed a supervisor. It was under question whether or not he was a supervisor or whether he was a rank and file.

Q And did you advise Mr. Marsh that in view of this he should stay in and work?

A That is right.

Q Do you recall for approximately how long Mr. Marsh remained in the plant?

A No, I do not.

Q Do you recall how long the strike lasted?

[41] A From February 15 to—up to the first of June.

• • • •

[42] BY MR. SMEDSTAD:

Q Mr. Norman, you testified earlier concerning the first meeting with these employees, on or about December 29, is that correct?

A That is correct.

Q What year was that?

A 1966.

Q '66. Where did that meeting take place?

A Zona's Restaurant.

Q Where is Zona's Restaurant located?

A Cleveland Avenue.

Q What city?

A Columbus, Ohio.

Q I want you to look at what has been received as General Counsel's Exhibit 4-D, a card signed by Mr. Beckelheimer, and the card's signature is Homer R. Beckelheimer. Is he also known as Robert Beckelheimer?

A That is right.

Q Now, I want to draw your attention to the meeting that you held with the employees at the Union Hall on February 4, the day after the hearing.

A Yes.

[43] Q At the beginning of that, when the employees showed up, did you see either Mr. Marsh or Mr. Schafer?

A That's right.
Q Did you see both of them?
A That's right.
Q Did you say anything to them?
A Yes, I did.
Q What did you say to them?
A I told them that our attorney had decided that their cases were subject to the ruling of the Labor Board, and that they would not be allowed to participate in this movement.
Q Let me move back another day, to February 3, at the New Post Office, and the scheduled Labor Board hearing that you testified about. I believe you testified that there was a man by the name of Lynch and a man by the name of Mason present. Is that correct?
A That's right.
Q Were these two gentlemen employees of the Linden Lumber Company?
A That's correct.
Q Do you know what jobs they held at Linden Lumber?
A I did not. I knew Lynch was a truck driver. I didn't know whether Mason was or not, but I knew he was immediately thereafter.
Q Were they present in the room at the time Mr. Rector [44] was talking in the manner to which you testified?
A Yes, they were.
MR. RECTOR: I don't quite get that. Do you know—Do you mean in the hearing room of the NLRB hearing on February 3?
MR. SMEDSTAD: Yes.
I have no further questions.
TRIAL EXAMINER: All right. Mr. Rector, go ahead.

CROSS-EXAMINATION

BY MR. RECTOR:

Q Mr. Norman, I believe you testified that your first contact with the Linden Lumber Company was by an employee calling you on the phone?
A That's right.
Q Who was that employee?
A Do I have to answer that?
TRIAL EXAMINER: Yes.
THE WITNESS: Of course, he is no longer in your employ anyway. Dick Martin—Bill Martin.

BY MR. RECTOR:

Q Bill Martin?
A Yes.
Q Now, in your organizational campaign out there, when you got it going, who was your union representative then at [45] Linden Lumber Company?
A All of them.
Q All of them were. You mean you didn't have any steward or anything?
A No. You don't have stewards until after you have a contract with the company.
Q Well, don't you have a committee, or some spokesman or something?
A They were all acting as committeemen.
Q Who.
A They were all acting as committeemen, and speaking for themselves.

• • • •

[54] Q You do, though, contend that I said there wasn't going to be any election; we weren't going to recognize this union regardless of who said what?
A That is right.

• • • •

[57] Q You have testified here that you were going to let the Board decide the status of Schafer and Marsh, haven't you?

A Should I answer that?
MR. VERST: Yes.
[58] THE WITNESS: Well, I will tell you, we knew that—what you were trying to do.

BY MR. RECTOR:

Q Oh, you did?
A After a bunch of litigation and about two years, and all your people's gone, that we would still have to strike if we wanted—so we figured we might as well do it now and get it over with, and I have never been in a hearing in my life that was staged such as that. Never.

• • • •

[59] Q Now, this General Counsel's Exhibit 9, this list of people that you presented, that was for the purpose of showing a majority, wasn't it?
A Naturally.
Q Now, if you had a majority, why did you withdraw your petition for an election? Why didn't you go ahead and have your election?
[60] A I think I have already stated that.

• • • •

RICHARD MARSH

a witness called by and on behalf of the Charging Party, being first duly sworn, was examined and testified as follows:

[64] Q Will you tell us what happened at this meeting, sir?
A Yes. We went in and sat down, and while we were sitting there Mr. Rector was talking to the Hearing Officer about wanting to get his men down on record, and the Hearing Officer was telling him at that time that he wasn't interested in this, he was more or less interested in finding out what individuals could vote and who couldn't, and Mr. Rector said that he was here to prove the company was supervisory, and again the man said that he would take the evidence but he

was here to get the evidence for the Board, and the NLRB would make the final decision to find out which individuals would vote. And at that time Mr. Rector said that it made no difference to him what the NLRB said, that the company would not accept the union.

• • • •

[78] Q Mr. Marsh, were you ever told by anyone in management, let's say prior to February 1, 1967, that you had any authority to hire an employee?
A No, sir.
Q To fire?
A No, sir.
Q To transfer?
A No, sir.
Q To suspend?
[79] A No, sir.
Q To lay off?
A No, sir.
Q To recall?
A No, sir.
Q To promote?
A No, sir.
Q To reward an employee?
A No.
Q To discipline?
A No.
Q To adjust grievances?
A No.
Q To discipline?
A No.
Q Did you, in fact, ever exercise any of that authority?
A No, sir.
Q Prior to February 1 of 1967, was there any notice posted on any company bulletin board stating that you were any type of boss, foreman, or supervisor?
A No, sir.
Q Did you attend supervisory meetings?
A No, sir.
MR. VERST: I have no further questions

[80] BY MR. SMEDSTAD:

Q Mr. Marsh, were you employed at the company when Mr. LeVeck was hired?

A Was I? No, sir. You see, LeVeck was there for 17 years.

Q I see. When did he come into the area where you worked?

A He was the first one there. I guess he put—helped put the machinery and everything in.

Q When you first came in to the department, then, LeVeck was already working there?

A Yes, sir.

Q Did LeVeck say anything to you about whether or not he had been told by the company that you were his boss?

A No, sir. As a matter of fact, he told me the opposite.

Q What was it that he told you?

A He had made the statement that he asked Dunfee about it, if I was going to be boss back there, and Dunfee made the remark to him that he didn't think I was smart enough to be a boss.

• • • •

[98] RICHARD ALEXANDER

a witness called on behalf of the Charging Party, having been first duly sworn, was examined and testified as follows:

• • • •

Q Are you aware of the fact that there was a strike at Linden Lumber commencing on February 15, 1967?

A Yes.

[99] Did you come out of the plant and engage and participate in that strike?

A Yes, I did.

Q Did you carry a picket sign on the picket line?

A Yes, I did.

Q Did you thereafter return to the plant?

A Yes.

Q After the srike began?

A Approximately the end of May I went back with the rest of the men.

Q With whom?

A Bill Martin, Bice, LeVeck, Ross, Kountz, Thomas—I believe that's all.

Q Would you tell the Court what happened at this time?

A Well, we walked back in and asked for Mr. Riley, and he came out and Bill Martin asked him—or told him that we were ready to go back to work, and he asked us if the strike was over and we said we didn't know, but we were ready to go back to work.

Mr. Riley said to show him a sign that the strike was over, and then we would see about it.

Q So far as the employees that went out on strike, Mr. Alexander, did all of the employees whose names appear on General Counsel's Exhibit 9 go out on strike and walk the picket line and carry picket signs?

[100] A All except Beckelheimer.

CROSS-EXAMINATION

BY MR. RECTOR:

Q Mr. Alexander, you testified that you went out on strike February 15?

A That is correct.

Q That is correct?

[101] A Yes.

Q What did they tell you the strike was about?

A Well, this was—the company refused to recognize the Teamsters as a bargaining agent, and refused to recognize our union. It was a recognition strike.

Q In other words, they told you that it was definitely a recognition strike, is that correct?

A Yes, we struck for recognition.

Q Did they say anything about striking for a contract?

A No.

Q They didn't say anything about that?

A No.

Q Now, were you present at the meeting where these documents were read, this 8, 9, and 10?

MR. VERST: May the witness be shown the documents, please?

BY MR. RECTOR:

Q I will hand you General Counsel's Exhibit 10. Were you present when that was discussed?

A Yes, I was.

Q Now, in the discussion of this particular document, wasn't a contract brought up at all?

A No.

Q It wasn't brought up?

A No.

[102] Q I call your attention to paragraph 3—

A Yes, I see it there.

Q Wasn't the contract discussed, now, at that time?

A Well, not that I remember. This meeting was mostly to show the company that we had a majority of the men on the list.

Q I will hand you General Counsel's Exhibit 9. Is that the list you are talking about?

A Yes, sir.

Q I will hand you General Counsel's Exhibit 8, and was this document also discussed at that meeting?

A Yes.

Q Now, is it still your testimony that no contract was discussed at this particular meeting?

A The only way they were talking about a contract, about trying to have a contract with the company and the company refused to bargain with us at all. That's what I remember about the contract. It's been a long time ago now.

• • • •

[105] VICTOR I. SMEDSTAD

a witness called by and on behalf of the Charging Party, having first duly affirmed, was examined and testified as follows:

• • • •

[106] DIRECT EXAMINATION

BY MR. VERST:

Q Mr. Smedstad, are you a member of the bar?

A Yes, I am a member of the Ohio Bar.

Q And are you employed by a firm?

A Yes, I work with the law offices of Robert C. Knee.

Q And those law offices are located where?

A In Dayton, Ohio.

Q Now, in the course of your employment, does your law firm act as counsel for various Locals of the Teamsters Union?

A Yes, sir.

Q And did you, in the course of your practice, represent the Charging Party herein?

A Yes, sir.

Q At a representative hearing scheduled for February 3, 1967?

A That is correct.

Q Would you tell us in detail, sir, to the best of your knowledge and memory and recollection, just exactly what [107] transpired at this hearing?

A Well, first of all, the hearing never got under way in any formal way, but, if I may, I would like the privilege of backtracking a moment.

I was notified by the NLRB in Cincinnati that there was going to be a hearing on this petition because it appeared that the company was taking the position that two people were supervisors. I inquired as to who the individuals were and received the information that Henry Schafer and Richard Marsh were the ones. I, therefore, asked for and received and served subpoenas on these two individuals to appear at the hearing so that we might have testimony from these individuals to make sure the record was clear.

I met with these two individuals as witnesses approximately 45 minutes prior to the scheduled opening of the hearing.

Q Where did you meet with them?

A I met with them at the offices of Local 413 on High Street. I discussed with Mr. Schafer, for approximately a half hour, what his duties were and what his relationship with the company was.

I discussed very briefly with Mr. Marsh what his situation was, and by that time it was getting pretty close to ten o'clock. Marsh Schafer, Dow Norman and myself drove over to the New Post Office on Marconi Boulevard in Dow [108] Norman's automobile.

We walked up the second floor of the Post Office—as I recall the hearing was originally set for Room 205, and when we got there there was a note on the door saying that the hearing was moved to Room 209. With the other three individuals I walked down to Room 209. At the time—it was in February—I was wearing a blue car coat.

We came in to the hearing room. The hearing room, I should estimate, was about 14 feet across and perhaps 25 feet or better long, with perhaps five or six tables all pushed together in the center of the room, and there were chairs surrounding the tables. The four of us entered the room, and I don't think there were more than one or two chairs vacant on the door side. The rest of the chairs were pretty—well, fully occupied.

A gentleman who was afterwards identified to me as being the representative, I believe, of Summer was sitting immediately inside the door. As I faced this mass of tables, at the right-hand side, across the table, was a man whom I suspected was Harvey Rector, although I had not met him before. Immediately to his left and at the head of the table was Jack Baker, whom I knew to be an agent of the NLRB. To his left was a court reporter whose name I do not recall, but there was a young lady sitting beside her. Behind them was a series of chairs and a blackboard, as I recall.

[109] As I came into the room I believe the individuals on the door side stood up, because it became obvious there had to be some room for the four of us to sit down.

I took my briefcase and dropped it on to the table next to the court reporter, went behind the court reporter, took off my blue jacket and tossed it onto the set of chairs, and about this point Jack Baker introduced Mr. Rector to me as being a representative of the company.

Q Was Mr. Jack Baker assigned as the Hearing Officer for representation here?

A Yes.

Q Thank you.

A When I then moved over the chair where I had dropped my briefcase, Jack Baker handed me an appearance sheet.

I turned to Mr. Rector and I said, "I hope I don't have to fill this out. I've got a long name. Is there any possibility that we might enter into a consent?" And Mr. Rector said, "No, there is not."

He said, "If I might say it with a smile." I then sat down and was filling out the appearance sheet when Mr. Baker said, "Well, perhaps we can get some of the preliminary matters out of the way," and turned to Mr. Rector.

I looked up at that point. He turned to Mr. Rector and he said, "Mr. Rector, will you stipulate that the Petitioner is a labor organization within the meaning of [110] the Act?"

And Mr. Rector said, "No, I cannot stipulate to that. It is my understanding that this union,"—he did not say this unit, he said "this union"—"has been organized through the supervisors at Linden Lumber." He said, "It is my understanding of the law, from some cases that are now pending in the Sixth Circuit, that it would be unlawful for us to recognize any union that had been organized by supervisors."

Mr. Baker then said, "Mr. Rector, we are not talking about the unit. We are talking about this Local Union."

And Mr. Rector said, "That's right. I understand they have been organized by supervisors, and we cannot stipulate that they are a labor organization."

Mr. Baker said, "Well, you are familiar with the International Brotherhood of Teamsters?" And Mr. Rector said, "Oh, yes, they are a labor organization."

Then Mr. Baker said, "Well, we are just talking about Local 413, the Local Union of the International," at which point Mr. Rector said, "Well, all right. I will stipulate to that, but I want to go on record and make a record on the way in which this union was organized. I understand that it was organized by supervisors who coerced some of the employees into signing cards."

Mr. Baker said this evidence was not relevant in this [111] proceeding, and that he would not take such evidence, if the showing of interest was not a matter which could be litigated at a hearing, and Mr. Rector said, "You mean you are denying me the right to make a record, to have a record?" And Mr. Baker said, "Well, on this issue of how the union got its showing of interest, I will not hear this evidence."

Mr. Rector said, "Well, if you are going to deny me the right of the record on this, then the Board can do what it wants to. If it holds an election, the company will not bargain with the union."

At that point, I turned to Dow Norman, who was on my left, and told him that I thought we should discuss the matter, told Mr. Baker that if he didn't mind I wanted to talk to my client out in the hall, and then Dow and myself, Schafer and Marsh stepped out into the hallway.

In the hallway I discussed with my people the fact that due to the position that the representative of the company was taking, even though I felt that it was completely erroneous as far as the procedures of the Board were concerned, that if Mr. Rector just wanted to stand still and not do a darn thing—I suspect I used words stronger than darn—that he would drag this thing out for two years before any bargaining order would come about.

I asked the two individuals there, Schafer and Marsh, [112] whether or not the employees were really serious about a union, and I asked Dow the same question, and received the answer that they were.

I said, "It seems to me that this is a situation where, if you go through this hearing, regardless of how it turns out, it will be two years in all likelihood before

you can sit down and bargain with this company. There is a possibility that through economic action, in the way of a strike, the company might be willing to sit down and bargain, without having to go through any election."

The individuals, Dow, Schafer and Marsh, told me that it was their opinion that the employees were so highly irritated because of the manner in which the company was being run and the working conditions that all they would have to do would be to drop a nickel in the phone box and they would be out on the street right then and there.

At this point, I told them it was a matter of people sticking together, and if this was the way they felt I would ask the union president for authority to withdraw the petition and let them, and went down on the first floor of the Post Office where there was some public telephones and called the union number and talked to Dale Mann, whom I have known for about two years and with whom I have talked on many occasions on the phone, and recited to him what the problem was, and he understood, he said, that's what Harvey Rector's [113] reputation was, and that if I felt that the withdrawal of the petition was advisable, well, I would have full authority to do so.

I then returned up to the hearing area, I told Norm what Dale had said, and walked into the hearing room, and when I walked in I asked Jack Baker if he had a withdrawal request form, and Jack Baker looked through his papers and it appeared that he couldn't find one, and, I will be frank, I was a little nervous at the time, so I sat down with a pad of yellow paper and started to draw up a withdrawal form in longhand.

About that time, as I was sitting down, Mr. Rector —I will backtrack. As I came in the room, as I said before, Mr. Rector said, "By the way, I would like to talk to you when we are through with this," and I said, "Fine," and, as I say, I started to write out the withdrawal request, and Mr. Baker found a printed copy, filled out the appropriate formal parts of it and

handed it to me, and I signed it and returned it to him.

Mr. Baker asked Mr. Rector if he had any objection to the withdrawal or had any information which would be contrary to the position of the union, and Mr. Rector said he had no objection to the withdrawal. Mr. Baker then took it and said, "Thank you, gentlemen," and he started to leave the room, and several of the other people started to leave, [114] and Mr. Baker turned to me and said, "By the way, don't forget, Mr. Rector wanted to talk to you." So I passed a few words with someone else, I don't remember who it was, and Mr. Rector came around the table and he said, "Can I see you?" And I said, "Certainly."

We walked out into the hall, and to the best of my recollection there was no one else within hearing distance of us—at least, I don't recall seeing anybody else. Mr. Rector looked up to me and he said, "You know, I've known Bob Knee, Sr. for a good many years," and I said, "Yes, so I gather."

He said, "I originally came from Dayton," and I said, "That's what I've heard," and he said, "You know, I represent a lot of lumber companies up in Cleveland and the northern part of the state." I believe he mentioned another city. My recollection is that he said Canton—I may be a little wrong on that.

He said, "It's been our policy that whenever the union has a 30 per cent showing of interest that we are more than happy to enter into a consent agreement," and I said, "Well, Mr. Rector, I can assure you we had well over 30 per cent here." And he said, "Well, it is my understanding from my investigation that some supervisors have coerced some employees into signing cards," and I said, "Well, be that as it may," I said, "As I understand it, when this petition was [115] first filed the company submitted a list of 14 names to the Labor Board in Cincinnati and told the Labor Board that if the union would agree to these 14 members that the company would be willing to go through a consent election."

Mr. Rector said, "Yes, that's when they didn't know what they were doing, and when I came in on the case, when I looked at that list, I found that the list was not correct. For example, there was one individual who was no longer working at the plant," and he said, "Further, I understand that one or two people on here are supervisors."

I said, "Well, Mr. Rector, if this is what the problem is, I am certain if we would sit down maybe we could work out a list or we can agree on who the people are. If you and I can agree who the people are, will you enter a consent election?" And Mr. Rector said, "No, I will not."

He said, "According to the Sixth Circuit—"—and I believe he mentioned some case names, and I don't recall them now—I couldn't recall them when I was in law school—he said, "According to these decisions a company violates the law and commits an unfair labor practice if it bargains with a union that is dominated by supervisors." He said, "Now, if you were to come up with a new petition supported with a fresh showing of interest, a fresh 30 per cent showing of interest, then we would be happy to go into a consent election," and I said, "Well, Mr. Rector, we have virtually [116] all of the people lined up."

He said, "Well, I don't doubt that, but it was through the action of supervisors that they signed up, and, therefore, we will not sit down and bargain with you."

So I said, "Then there is no chance for a consent at this point," and he said, "No."

To the best of my recollection, at about that point we shook hands and he went his way and I went mine.

Q Upon leaving this hearing room, did you accompany Mr. Norman to the Union Hall?

A Yes, I did.

Q I show you what has been received into evidence as General Counsel's Exhibits 8, 9 and 10, and ask you if you recognize, if you are familiar with those documents?

A I certainly am.

Q Would you describe what you had to do in connection with these documents?

A I might say that I left the hearing area with Mr. Norman, Mr. Schafer and Mr. Marsh, and told Mr. Schafer that I thought the chances were good that the Labor Board would conclude that he was a supervisor and that he was basically on his own from here on out.

I told Marsh I thought his case was different; that we didn't want to have any problems, so—I don't remember whether I said I wanted to have him out of it, or words to [117] that effect.

Q You say you told Marsh his case was different?

A Yes, I said his case was different, and I said that even so, under the circumstances—

Q Different in what way?

A Well, I told him that while I thought Schafer was propably a supervisor that Marsh's status wasn't. I told him, in fact, for example, that Schafer had gotten a written set of instructions outlining what his supervisory authority was, and that Marsh had not received them and, in view of the circumstances under which this was distributed, as to the kind of duties that he had, that his situation was probably different. But, I said, I don't believe in tempting employers, so while, ordinarily at the close of a hearing, the union is out to lunch with the employees, I told Marsh that he had better not take any chances, I thought, and that he should go back to the plant and go back to work, and he would not eat lunch with us, but rather should return to the plant.

We, therefore, dropped Schafer and Marsh off—I don't remember the street—where one of their cars was parked, and I then went up to the office of the Local Union and sat down and looked at my copy of the rules and regulations, and took a yellow pad and drafted in longhand three instruments, which I then gave to Bill Gatton, the [118] office manager for 413 and asked to have copies typed up, which he did, and then brought them back to me, and what I have in my hand are accurate copies of what Bill gave me.

As a matter of fact, one—two of them are carbon copies which he did give to me, and the other one appears to be a Thermo-fax of a copy, a copy of one of the three documents.

I then gave these documents to Dow Norman and I said that under the circumstances I wanted to make sure that there was no way that the company or anyone else could take the position that the company was exercising undue influence on people who joined the union through the active participation of supervisors; that I felt that he should have a meeting with these employees and make sure that when they came they came there voluntarily and they came there without any influence from either Schafer or Marsh. I said I thought that they should attend a single meeting so there would be no question about what took place; that they should be read the documents which they were to sign, and they were to be told what it was, and if the union was going to attempt to get the company voluntarily to recognize the union, and that by signing it they understood it, the other documents I prepared, and I told Dow that I thought what he should do was to go over to the company, talk to someone in charge—not by telephone—read them the demand, which is General Counsel's [119] Exhibit 10, and also General Counsel's Exhibit 9 but, certainly, under all circumstances, to leave these two documents with the company, and if the company indicated that it was willing to go along with the propositions set forth in General Counsel's 10 that he should ask them to sign General Counsel's 8 after the blanks were filled in, if this was necessary.

I said, "Even if they don't agree, if you will, I think it would be beneficial if you gave a copy of General Counsel's 8 to the company so they would be fully aware of just precisely what it is that the union is seeking." Then I left.

MR. VERST: No further questions. Your witness.

CROSS-EXAMINATION

BY MR. RECTOR:

Q I have one question. Is it your testimony then that you actually withdrew the petition because you did not want to go through a long, lengthy litigation before the Board?

A Before the Board and before the Court of Appeals which would, from my experience, take a good two years or better.

Q I daresay, you are right; but that is the reason you withdrew your petition?

A That is correct.

• • • •

[122] WILLIAM RILEY

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

• • • •

DIRECT EXAMINATION

BY MR. RECTOR:

Q Mr. Riley, what is your position with the Linden Lumber Company?

A I am the manager of Linden Lumber Company.

Q General manager?

[123] A General manager.

Q Were you present at the NLRB hearing on February 3?

A Yes, sir.

Q Could you tell us your version of what happened?

A Yes, sir.

I don't have as good a memory as was related before, but, at the outset, Mr. Rector asked several times to go on the record. We did not really know if this was done or not—we thought it probably was, at the start,

and Mr. Rector stated that we could not deal with the union at this time because we would be violating a section of the law.

Q Did I say why we would be violating this section?

A Because it was dominated by supervisors from the company.

• • • •

[141] CROSS-EXAMINATION

BY MR. VERST:

• • • •

[157] Q Now, have you yourself ever given Mr. Marsh authority to fire? Have you, personally?

[158] A No.

Q Have you ever given him any authority to hire, you, personally?

A Not personally, no?

Q To discharge?

A For him to discharge?

Q Have you ever informed him that he had any authority to discharge?

A I never said, "Dick, you have."

Q This is what I am asking.

A No.

Q Suspend an employee? Have you ever informed him personally?

A The understanding was there.

Q Have you ever informed him personally?

A No.

• • • •

GC #4-A

AUTHORIZATION FOR REPRESENTATION

I, the undersigned, employed by

LINDEN LUMBER COMPANY

hereby request membership in TRUCK DRIVERS UNION LOCAL No. 413, and authorize said Union to represent me, and in my behalf to negotiate all agreements as to hours of labor, wages, Union Shop and other employment conditions.

/s/ MELVIN BUD BICE—Yard
Signature of Employee — Dept.

1129 Lenore Ave., Columbus, Ohio
Address — City

267-6738—Dec. 29, 1966
Telephone — Date

[UNION LABEL]

TRUCK DRIVERS UNION, LOCAL No. 413

OF THE INTERNATIONAL BROTHERHOOD OF

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

CA 1-6819 • CA 1-0776

233 SOUTH HIGH STREET COLUMBUS, OHIO 43215

[illegible] HANN
PRESIDENT
MIT DUNCAN
SECRETARY-TREASURER

January 3rd, 1967

NATIONAL LABOR RELATIONS BOARD
Case No. 9-CA-4117
Docket Entry No. 21 - GC Exhibit No. GC-5
Disposition: Identified ✓ Received ✓ Rejected
In the matter of Linden Lumber Co
Date 10-31-67 Witness Alexander Reporter Bauer
No. Pages 1

Linden Lumber Company
1850 Denune Avenue
Columbus, Ohio

Mr. William Riley, President;

This will inform you that a majority of all truck drivers, warehousemen, production workers, maintenance men and yard men employed by you have designated this local Union as their agent for collective bargaining for wages, hours and conditions of employment.

No other person or organization represents these employees and you are cautioned against taking any punitive action against these employees, or making any agreement with any other person or organization purporting to represent them.

We respectfully request that you recognize this local Union as the agent for collective bargaining for these employees.

We await your prompt reply.

Yours truly,

TRUCK DRIVERS UNION, NO. 413

Mit Duncan
Mit Duncan
Secretary-Treasurer

MD/wrg

RRR

45
GC #5

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved.
Budget Bureau No. 64-R002.14

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO. 9-RC-7096

DATE FILED January 5, 1967

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

- [XX] RC-CERTIFICATION OF REPRESENTATIVES—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)* [ ] In unit not previously certified [ ] In unit previously certified in Case No. _____.
- [ ] AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: Linden Lumber Company
EMPLOYER REPRESENTATIVE TO CONTACT: William Riley
PHONE NO.: 471-9000

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*: 1850 Denune Avenue Columbus, Ohio

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*: Lumber Company

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Lumber

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All truck drivers, warehousemen, production workers, maintenance men and yard men.

Excluded: Office, clerical, supervisory and professional employees, guard, watchmen and all others excluded by the Act as amended.

6a. NUMBER OF EMPLOYEES IN UNIT:
PRESENT 14
PROPOSED (BY UC/AC)

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?* [XX] YES [ ] NO
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [XX] Request for recognition as Bargaining Representative was made on 1/3/67 *(Month, day, year)* and Employer declined recognition on or about No Reply *(Month, day, year)* *(If no reply received, so state)*

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the NATIONAL LABOR RELATIONS BOARD.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*
NAME: None
ADDRESS:
AFFILIATION:
DATE OF RECOGNITION OR CERTIFICATION:

Docket Entries: Petition Received; Amended; Dispatched; Returned; OFFICIAL EXHIBIT NO. GC #6

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ____ NO XXX

11b. IF SO, [illegible] Linden Lumber Co

No. Pages 1

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____ *(Insert name)* A LABOR ORGANIZATION, OF _____ *(Insert address)* SINCE _____ *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.) None

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Truck Drivers Union, Local #413, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

(Petitioner)

Mit Dewson
(Signature of representative or person filing petition)

Secretary-Treasurer
(Title, if any)

[illegible]eet, Columbus, Ohio 43215
(Address, city, State, and ZIP Code)

CApital 1-6619
(Telephone number)

WILLFUL FALSE STATEMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 894-283

GC #6

January 6, 1967

NATIONAL LABOR RELATIONS BOARD
GC-7

Mr. Mit Duncan
Truck Drivers Union
Local #413
233 South High Street
Columbus, Ohio 43215

Dear Mr. Duncan:

This will acknowledge receipt of your letter of January 3, 1967, in which you claim to represent certain of our employees and request the Company to recognize your Union as bargaining agent for such employees.

We do not believe that your Union does represent a majority of the employees specified in your letter and, accordingly, the Company declines to recognize you as bargaining agent unless and until you have been certified as such pursuant to an election conducted under the orderly processes of the National Labor Relations Board. We believe that this is the proper way to determine such questions.

Therefore, we suggest that you proceed in the manner prescribed by law. If you fail to file a petition in the near future, we may elect to do so.

Yours very truly,

Linden Lumber

William B. Riley
Manager

WBR/kc

GC #7 47

D. Norman B.A.

Linden Lumber Company hereby recognizes Truck Drivers Union, Local No. 413 as the collective bargaining representative of its employees in the following unit:

All Truck Drivers, Warehousemen, Production and Maintenance employees and Yard Men at its facility at 1850 Denune Avenue, Columbus, Ohio excluding office clerical employees, guards and supervisors as defined in the National Labor Relations Act.

By so recognizing the Union, the Company does not agree that the following men are in the unit:

_____

_____

The Union agrees that within 10 days after this recognition agreement is signed it will file an action with the N.L.R.B. asking it to clarify whether _____

_____ and _____

are employees in the above unit or are supervisors within the meaning of the Act. The parties agree that negotiations will not be delayed because of this problem but that any contract reached will be subject to the conclusion of the N.L.R.B. on the issue of whether or not _____

and _____ are in the appropriate bargaining unit.

NATIONAL LABOR RELATIONS BOARD
Docket No. [illegible] OFFICIAL EXHIBIT NO. [illegible]
Disposition: Identified / Received / Rejected
In the matter of [illegible] LINDEN LUMBER COMPANY
Date [illegible] Witness [illegible] Reporter [illegible]
No. Pages /

TRUCK DRIVERS UNION #413

_____

_____

_____

_____

Er 3

GC #8

We, the undersigned employees of Linden Lumber Co., want Truck Drivers Union, Local No. 413, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to represent us for the purposes of collective bargaining with respect to our wages, hours and working conditions at Linden Lumber Company. Each of us has voluntarily attended the meeting at which this is being signed. Each of us has voluntarily signed this. Each of us believes the company would not want us to join Truck Drivers Union, Local No. 413.

E. Norman B.A.

Bill A Plant

NATIONAL LABOR RELATIONS BOARD

Docket No. OFFICIAL EXHIBIT NO.

Disposition: Identified / Received / Rejected

In the matter of

Date Witness Reporter

No. Pages

Ex 2

Truck Drivers Union, Local No. 413 hereby requests that Linden Lumber Company recognize this union as the collective bargaining representative of its employees in the following unit:

All Truck Drivers, Warehousemen, Production and Maintenance employees and Yard Men at its facility at 1850 Denune Avenue, Columbus, Ohio, excluding office clerical employees, guards and supervisors as defined in the National Labor Relations Act.

We hereby also ask the Company to set a date when bargaining for a contract can start.

As proof of our majority status, attached is a petition signed by a majority of your employees in the above unit.

We believe employees Marsh and Schafer belong in the unit. However, if the Company disagrees, the union is willing to let the N.L.R.B. decide the question after the Company recognizes the Union as the representative of the employees in the above unit.

Ex 1 H. Norman B.A.

NATIONAL LABOR RELATIONS BOARD
Docket No. 8-CA-4884 8-CB-1284 OFFICIAL EXHIBIT NO. GC 10
Disposition: Identified ___ Received ✓ Rejected ___
In the matter of Linden Lumber Co
Date 12-4-67 Witness Norman Reporter Lewis
No. Pages 1

Rector and Associates

2772 Manchester Ave., N. W.
North Lawrence, Ohio
Telephone: Massillon, Ohio 833-6868

Labor Relations Counselors
COMPLETE MANAGEMENT SERVICE SINCE 1938

NATIONAL LABOR RELATIONS BOARD
Docket No. 9-CA-4357 OFFICIAL EXHIBIT NO. GC #11
Disposition: Identified ✓ Received ✓ Rejected
In the matter of Linden Lumber Co.
Date 2-3-67 Witness Norman Reporter Ware

February 6, 1967

Mr. Don Norman
Truck Drivers Union
Local 413
233 South High Street
Columbus, Ohio 43215

Re- your request for recognition as bargaining agent for the employees of Linden Lumber Co.

Dear Mr. Norman:

The Linden Lumber Company has forwarded to me certain papers which you delivered to it on Monday February 6,1967.

The company refuses to recognize your union as bargaining agent because your membership includes supervisors, within the meaning of Section 2 of the Act., who influenced and dominated employees of the proposed unit. This position was made clear by the company at the NLRB hearing February 3,1967 in case NO. 9-RC-7096. Your union had the opportunity to prove its clairs before NLRB but withdrew its petetion. Therefore, the company can not recognize your union so long as the supervisory influence exists. To do so would be in violation of Section 8 (a)(2) of the Act., because any signatures you may have obtained under this influence would not be legal.

The Linden Lumber Company has never taken any position contrary to the labor act. Therefore, your clair that certain employees believe the company would not want them to join your union is hardly relevant to the issues.

The company also informs me that your union threatened to strike. Therefore, I must inform you that if there is a strike, at this time, both your union and the supervisors in question will be liable to suit for damages.

I agree that the NLRB should decide this matter. However, the NLRB is powerless to rule because your union withdrew its petetion.

I trust this explains the matter.

Respectfully yours

RECTOR & ASSOCIATES

Harvey B. Rector
For Linden Lumber Co.

HBR/vah

FEB 07 1967

FX-11 R. Norman B.A.

GC #11 51

SUPREME COURT OF THE UNITED STATES

No. 73-1231

LINDEN LUMBER DIVISION, SUMMER & CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ORDER ALLOWING CERTIORARI. Filed April 22, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 73-1234 and a total of one hour is alloted for oral argument.